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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,348	09/30/2003	Robert G. Jones	5007756-85	7128

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KANSAS CITY, MO 64106-2140

EXAMINER

DEUBLE, MARK A

ART UNIT PAPER NUMBER

3651

DATE MAILED: 01/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/676,348

Applicant(s)

JONES ET AL.

Examiner

Mark A. Deuble

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 18-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23, 24 and 26-28 is/are allowed.
- 6) ☒ Claim(s) 18, 19 and 25 is/are rejected.
- 7) ☒ Claim(s) 20-22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Objections*

1. Claim 20 is objected to because of the following informalities: In line 8 of the claim, the work attach is followed by the word attached which appears to be a typographical error.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 18 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Pelletier (U.S. Patent No. 5,217,104).

As was stated in the previous office action, Pelletier shows an ejector used in a product determination and separation line including a conveyor belt for transferring product from a first location. The ejector comprises a flipper arm 1 and an actuator 2 for rotating the flipper arm about a moving vertical axis that is perpendicular to the conveyor direction. A support assembly including members 3-9, 11-12, and 15 which positions the flipper arm and the actuator above a surface of the conveyor so that the flipper arm partially overlaps the conveyor when the flipper arm is in a non-activated position. This support structure may be viewed as having a first member 15 fixedly attached to a frame 10 of the conveyor and a second member formed by shaft 12 rotatably or hingedly attached to the first member by being inserted through a bearing hole therein. While there is no discussion in Pelletier as to how the members of the support assembly are joined to one another, the shaft 12 forming the second member inherently has a releasable

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connection with the first member because it may be pulled out of the first member when it is disconnected from the crank arm 11. This ability to disconnect the first and second members meets the passive language of the claims that the connection be releasable. Thus Pelletier shows all the structure required by claims 18 and 25.

In response to this rejection, the applicant argues that Pelletier does not show “an actuator for rotating said flipper arm” as required by claim 18 because the item 2 is described as a carrying arm and therefore does not disclose the feature of an actuator. The examiner respectfully disagrees. In order for a part to be considered to be an actuator, all the part must do is cause the flipper arm to move. The part 2 clearly does this, as it is the only part directly connected to the flipper arm 1 that causes it to move.

Applicant also suggests that the motor 5 of Pelletier is not an actuator because it must be combined with a linkage system in order to provide the function of an actuator. The relevance of this argument is not clear because the part 2 may be considered to be an actuator as is discussed above. However, even if the part 2 is not considered to be an actuator, the motor 5 may be considered to be an actuator because it causes the flipper arm to move. The fact that this occurs through a linkage is irrelevant to the question of whether or not the motor may be considered to be an actuator in the absence of any further language in the claims describing the actuator.

Applicant states that amended claim 18 recites “a support for locating said flipper arm above a surface of the conveyor to at least partially overlap a belt of the conveyor when said flipper arm is in a non-activated position, wherein said flipper arm is positioned below said actuator.” However, amended claim 18 does not in fact include such a recitation.

Applicant also states that Pelletier does not disclose “a support for locating said flipper arm and said actuator above a surface of the conveyor,” as required by claim 25. The examiner respectfully disagrees. In making this argument, the applicant assumes that the motor 5 was relied upon by the examiner to show that the apparatus of Pelletier has an actuator. However, this assumption is incorrect. The member 2 may itself be viewed as forming the actuator. This actuator is held by a support assembly that positions the member 21 and the flipper arm above the surface of the conveyor as required by claim 25. The fact that the motor 5 is positioned below the surface of the conveyor is irrelevant because there is no requirement that the actuator be formed by a motor. Furthermore, even if the motor forms part of the actuator of Pelletier, there is no requirement that the entire actuator be supported above a surface of the conveyor.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pelletier in view of Scopatz et al. (U.S. Patent No. 4,595,091).

In regard to the limitation that the releasable connection comprises a screw and threads, it should be noted that Scopatz et al. teaches the advantageous use of use of a screw and threads for releasably connecting two parts of a conveyor. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to use screws and threads to connect member

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11 to the shaft 12. When this is done, the screw and threads would form part of the releasable connection.

In regard to this rejection, applicant makes an argument against the rejecting claim 19 over Pelletier in view of Scopatz. However, the applicant does not point out what feature is missing from the combined teachings of Pelletier and Scopatz. Instead applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

### ***Conclusion***

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Allowable Subject Matter***

3. Claims 20-24, and 28-28 are allowed.


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4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A. Deuble whose telephone number is (571) 272-6912. The examiner can normally be reached on Monday through Friday except for alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

md

  
GENE O. CRAWFORD  
SUPERVISORY PATENT EXAMINER